

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	GN Docket No. 04-54
Capability to All Americans in a Reasonable)	
and Timely Fashion, and Possible Steps to)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of 1996)	

**COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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INTRODUCTION AND SUMMARY	1
I. ADVANCED TELECOMMUNICATIONS CAPABILITY IS BEING DEPLOYED THROUGHOUT THE UNITED STATES ON A “REASONABLE AND TIMELY” BASIS	4
A. Cable Broadband Service is Expected To Be Available to More Than Ninety Percent of Cable’s Video Service Area by Year-End.....	4
B. Cable Operators Are Continually Enhancing the Quality of the Cable Broadband Experience.....	9
C. Consumer Demand for Broadband Service Is Rapidly Increasing	9
D. Deployment of Broadband Services Has Kept Ahead of – and Stimulated – Consumer Demand for Such Services.	13
II. THE COMMISSION SHOULD PERMIT ADVANCES SERVICES TO DEVELOP IN A STABLE, UNREGULATED POLICY ENVIRONMENT.....	14
III. THE COMMISSION SHOULD AFFIRMATIVELY PREVENT UTILITIES FROM USING THEIR CONTROL OF POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY TO DISADVANTAGE ADVANCED SERVICES COMPETITORS.....	18
CONCLUSION.....	19

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The National Cable & Telecommunications Association (“NCTA”), by its attorneys, submits the following comments in response to the Commission’s Fourth Notice of Inquiry (“Fourth Notice”) in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. NCTA’s members include the operators of cable television systems serving more than 90% of the nation’s cable television subscribers. NCTA’s members are the leading providers of broadband Internet protocol in the United States, and are aggressively involved in the development and deployment of Internet telephony. NCTA also includes operators of more than 200 cable program networks, as well as companies that provide equipment and services to the industry.

INTRODUCTION AND SUMMARY

Section 706 of the Telecommunications Act of 1996 directs the Commission periodically to investigate and determine the state of broadband deployment. The Fourth Notice, like each of the Commission’s prior inquiries, asks for data and analysis on the state of deployment of advanced telecommunications services to all Americans. The information submitted by

interested parties in these proceedings, along with company data compiled by the Commission from semi-annual Form 477 reports, has provided the grounds for the Commission's conclusions in each of the three prior reports that broadband deployment was "reasonable and timely."

The Fourth Notice seeks supporting information similar to that sought in previous Section 706 Notices of Inquiry, and additional information to take account of the evolving conditions in the broadband marketplace. The Fourth Notice also reveals the Commission's intention to undertake a separate proceeding to revise Form 477, and thereby to gather data on a more granular basis than is available from the currently required reports in order "... to obtain more detailed understanding of the provision of services with greater bandwidth than 200 kbps and the availability of the broadband technologies that have achieved the greatest mass market acceptance to date, cable modems and DSL connections, which should facilitate future 706 inquiries."¹ But the Commission acknowledges that the revised Form 477 and data collected pursuant to the revised form will not be available in time for inclusion in the Report to be issued in this proceeding.²

Meanwhile, however, there is ample evidence that deployment of broadband services has continued at a pace that is "reasonable and timely," in the words of the statute.³ In an environment that is notably characterized by the absence of constraining regulation – and by increasingly vibrant competition – availability of broadband service has become ubiquitous, and the quality of such service continues to be upgraded and improved.

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 04-55, rel. Mar. 17, 2004, at ¶ 15 ("Notice").

² Notice at ¶ 9.

³ See Section 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

By the end of this year, cable modem service will be available to nearly 100 million subscribers. This represents 91 percent of all the homes passed by cable systems – and cable systems pass 95 percent of the nation’s occupied homes. And at the same time as cable operators were completing their nationwide deployment of high speed Internet service, they were already developing and beginning to deploy new technologies that enhanced the quality of that service – increasing download transmission speeds from 200 kbps to as much as 3 Mbps. New modem technology may also make possible the offering to consumers of more options with respect to available capacity and transmission speed.

It is still the case that only a bare majority of American households purchase *any* Internet service, and that only a third of those households purchase high speed broadband service. But both those numbers are increasing rapidly. A recent Morgan Stanley report projects that 61.4 percent of all households will have Internet access by the end of 2005, and that almost half of these Internet households will be broadband customers.

At this point, while broadband subscribership is still substantially behind broadband deployment, the Commission should continue to use the 200 kbps standard as the appropriate measure of the timeliness and reasonableness of the deployment of “advanced telecommunications capability.” That standard marks the distinction between narrowband and broadband, and that is the distinction that remains most relevant. The story that the facts and figures tell is that broadband deployment has proceeded at a rate that easily exceeds what is reasonable and timely. Deployment of broadband has kept well ahead of consumer demand and has, in fact, stimulated increasing demand for high speed service.

The Commission has played an important and essential role in fostering these positive developments – not by aggressively regulating or subsidizing broadband deployment but by

purposefully allowing the cable modem service and technology to develop *without* the costs, constraints and uncertainty of regulation. From its initial commitment to a policy of “vigilant restraint” to its determination that cable modem service is an interstate information service outside the constraining frameworks of Title II or Title VI of the Communications Act, the Commission has recognized the need to avoid intrusive regulation of new and evolving technologies and services.

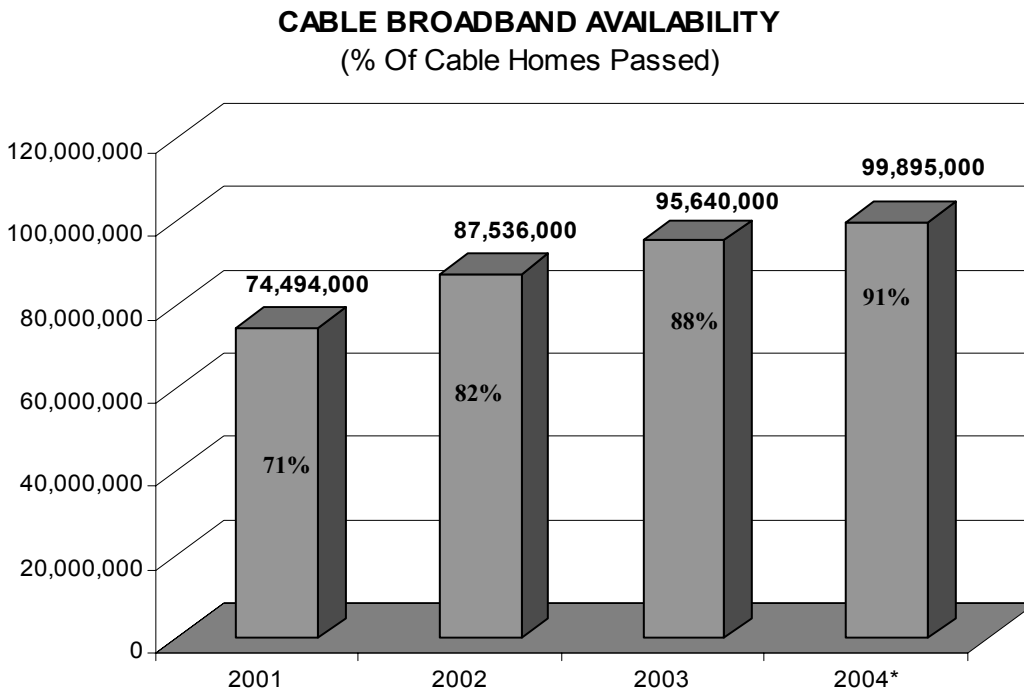
By letting competitive marketplace forces drive the deployment and development of cable modem service, the Commission has made such development and deployment one of the greatest success stories of the Telecommunications Act of 1996. Section 706 of that Act directs the Commission to encourage the deployment of advanced telecommunications capability. There is no better way to fulfill that mandate than to continue to keep federal, state and local regulation from slowing down and interfering with the demonstrated success of the marketplace.

**I. ADVANCED TELECOMMUNICATIONS CAPABILITY IS BEING DEPLOYED
THROUGHOUT THE UNITED STATES ON A “REASONABLE AND TIMELY”
BASIS.**

**A. Cable Broadband Service is Expected To Be Available to More Than
Ninety Percent of Cable’s Video Service Area by Year-End.**

Deployment of cable broadband services has accelerated dramatically since NCTA filed its comments in response to the Third NOI in September 2001. A Morgan Stanley report estimates that cable broadband service was available to 66,148,000 homes, or 64 percent of cable homes nationwide, by the end of the second quarter of 2001. This represents a gain of more than 30 million homes passed by cable modem services in comparison to the total eighteen months

before that date.⁴ Morgan Stanley's most recent report estimates that, by the end of 2004, cable modem service will be available to more than 99,895,000 homes – 91 percent of all homes passed by cable. This increase in deployment will represent an average gain of more than 850,000 new homes to which service will have become available each month over a period of three and one-half years.⁵ The rapid pace at which cable companies have deployed modem service has few, if any, parallels in the history of making valuable infrastructure enhancements widely available to residential customers. The chart below demonstrates these dramatic gains.



Source: Morgan Stanley, "What does the Market Expect?" April 8, 2004, Morgan Stanley. * - denotes an estimate

⁴ "Broadband Cable Second-Quarter Review," Telecom-Cable Industry Overview, Morgan Stanley Dean Witter, Aug. 29, 2001, at 9 ("Morgan Stanley 2001 Report").

⁵ "What Does the Market Expect?," Cable Satellite Industry Overview, Morgan Stanley, Apr. 8, 2004, at 42 ("Morgan Stanley 2004 Report").

The Morgan Stanley report shows that the seven largest cable MSOs have substantially completed the process of ubiquitously deploying broadband Internet capability, or will achieve that objective by the end of this year.⁶ Future deployment among the largest companies will be limited, for the most part, to newly constructed areas and new additions in already served areas. The Morgan Stanley report further shows widespread broadband deployment by smaller operators.⁷ The cable industry is well on the way to fulfilling the goal of making broadband Internet service available to all areas in which cable service is offered.

The Wireline Competition Bureau's data on the percentage of zip codes in which there is at least one high-speed subscriber (i.e., a subscriber to a service delivered at a rate of at least 200 kbps in one direction) further demonstrate that deployment of broadband "to all Americans" has increased dramatically over the past three years. This indicator of deployment of broadband service "to all Americans" has its limitations: it measures the availability of one-way, not just two-way service; it assesses the availability of service in an entire zip code based upon whether service is being taken by a single subscriber within that zip code; and it does not provide the raw numbers of potential subscribers located in zip codes categorized on the basis of population density. Nevertheless, the zip code data compiled by the Wireline Competition Bureau from service providers and made available publicly in semi-annual reports effectively complements information gathered by private sources such as Morgan Stanley.

According to the reports of the Wireline Competition Bureau, as of June 2000, high-speed service was already available and subscribed to by at least one subscriber in 97.3 percent of zip codes accounting for 99.7 percent of the domestic population in the most densely

⁶ *Id.*

⁷ *Id.*

populated zip code category, which is populated by more than 3,147 persons per square mile.⁸ By June 2003, high-speed service was available and subscribed to by at least one subscriber in 98.9 percent of zip codes, equivalent to 100 percent of the domestic population, in the most densely populated zip code category.⁹ There has been dramatic growth during the same period in high-speed service to less well-populated zip codes. With respect to the least populated category, fewer than six persons per square mile, there were only 23 percent of zip codes, equivalent to 43.9 percent of the population residing in that category, with at least one high-speed subscriber in June 2000.¹⁰ But just three years later, 68.5 percent of zip codes in that population density category, equal to 85.7 percent of residents in that category, contained at least one high-speed subscriber.¹¹ And in the mid-range category of 41 to 67 persons, the percentage of population residing in zip codes with at least one high-speed subscriber had reached 98.5 percent by mid-2003.¹²

The decisive trend in the direction of increased deployment of broadband capability is confirmed by a study prepared by the National Exchange Carrier Association (“NECA”), cited by the Commission in the Fourth Notice, which shows that nearly 79 percent of NECA member companies were equipped for DSL last year.¹³ NECA’s report shows that the number of its companies “... deploying DSL services increased from 557 in 2001 to 814 in 2003.”¹⁴ These

⁸ “High Speed Services for Internet Access: Status as of June 30, 2003,” Industry Analysis and Technology Division, Wireline Competition Bureau, December 2003, at Table 14. It is important to note that these data refer to “persons,” not subscribers, households or television households.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Notice at ¶ 31.

¹⁴ *Id.*

results belie concerns that the deployment of broadband services to rural areas is not “reasonable and timely.”

The cable industry’s achievement of widespread broadband deployment has been accomplished in a highly competitive environment in which cable competes with telco DSL offerings, numerous independent operations that utilize telco networks and dial-up services. Cable companies and their competitors have responded to the dynamically competitive broadband marketplace by implementing a variety of strategies that have included service bundling, price cutting, feature enhancements, and increases in the speed at which service is offered. This competitive dynamic has contributed to the spur of constant stress among service providers that has animated the broadband marketplace in recent years and has redounded to the benefit of consumers.

The Commission further expresses high hopes that wireless, satellite and Broadband over Powerline (“BPL”) services will eventually join cable and telephone companies as full-fledged broadband service alternatives for residential customers. Even at this stage of broadband deployment, however, the pace at which broadband service has reached residential customers on a competitive basis has few, if any, historical parallels.

The cable industry recognizes that achieving the goal of broadband deployment “to all Americans” will require additional efforts in areas characterized by challenging demographic circumstances. The tendency of DBS to dominate video distribution in areas of exceptionally low population density is generally attributable to the differences in the economics of distribution by means of fixed satellite plant and terrestrial broadband plant. These rural areas generally obtain subsidized telephone service from rural telephone companies. It is unlikely that

cable companies will be able to provide broadband services to these areas without changes in technological and economic conditions.

B. Cable Operators Are Continually Enhancing the Quality of the Cable Broadband Experience.

In addition to undertaking the massive rebuilds and upgrades that have made cable modem service available to most of the nation, cable operators have continued to develop and use innovative technology to enhance the speed, and quality of their customers' Internet experience, as well as their options and alternatives. First, operators are finding ways to continue to increase the transmission speed of Internet services. Just as the speed of narrowband Internet transmissions increased repeatedly and geometrically over a short period of time as modem speeds increased from 300 bps to 56 kbps, many cable modem customers have seen their downstream transmission speeds increase from 200 kbps to 3 Mbps – a change most noticeable when downloading files and data. The greater transmission speeds made possible a broad range of new applications, including VoIP and content offerings.

Second, innovations in cable modem technology are making it possible for some cable operators to begin offering customers options with respect to the capacity and transmission speed available to them. While some heavy downloaders of files could choose to purchase greater transmission speed, other Internet surfers would be able to opt for lesser capacity at lower cost. The marketplace will determine whether this is an effective and efficient way to offer service to consumers – just as it has determined the rapid pace at which transmission speeds are increasing.

C. Consumer Demand for Broadband Service Is Rapidly Increasing.

Despite the ubiquitous deployment and availability of broadband Internet service, it is still the case that a majority of households choose to purchase narrowband Internet service – or no residential Internet service at all. But more and more are choosing broadband.

According to Morgan Stanley, at the end of 2001, 50.1 percent of households in the United States purchased some form of residential Internet service.¹⁵ Only 17 percent of these 54 million Internet customers (taking account of broadband-“dial-up” overlap) were broadband customers: 12 percent purchased cable modem service, and five percent purchased DSL service.¹⁶ The remaining 82 percent of Internet customers were narrowband dial-up customers.

By the end of 2003, residential Internet subscriptions had increased to 61.72 million, or 55.7 percent of households, and broadband’s share of the residential household subscriptions had increased to 33 percent.¹⁷ The cable modem share of Internet subscriptions was estimated to be 23 percent, while the residential DSL share was estimated to be 10 percent.¹⁸ In terms of actual numbers of customers, cable modem subscribership increased from 5.5 million subscribers as of June 2001, to an estimated 15.69 million subscribers as of December 2003, a gain of 185 percent in two and one-half years.¹⁹ During the same period, the number of residential DSL customers increased from 2.84 million to an estimated 6.56 million, an increase of 131 percent.

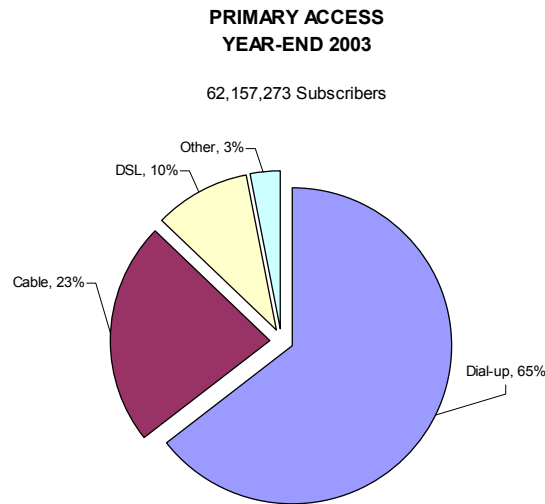
¹⁵ Cable/Satellite Industry Overview, “*Industry and Company trends for 2004 and 2005*,” Morgan Stanley, Jan. 8, 2004, at 59.

¹⁶ Morgan Stanley 2004 Report at 41.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Morgan Stanley 2001 Report at 7; Morgan Stanley 2004 Report at 41.



Source: Morgan Stanley, "What does the Market Expect?" April 8, 2004.

Morgan Stanley projects that both these trends – the increase in the number of households subscribing to some form of Internet service and the increase in broadband's share of Internet customers – will continue. By year-end 2005, there are expected to be 70 million residential Internet customers, equivalent to 61.4 percent of households.²⁰ Of these customers, Morgan Stanley projects that almost half will be broadband customers, with 32 percent expected to opt for cable modem service and 16 projected to purchase DSL service.²¹ The Morgan Stanley report projects that by 2007, approximately 60% of all residential Internet customers will be broadband customers.²²

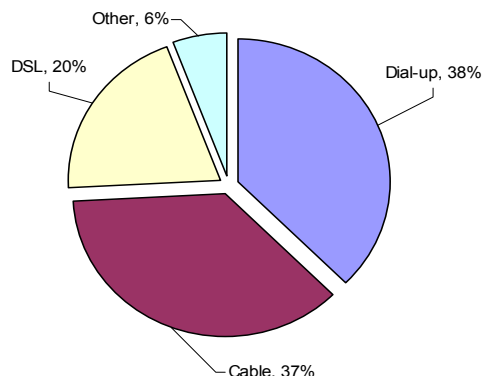
²⁰ Morgan Stanley 2004 Report at 41.

²¹ *Id.*

²² *Id.*

**PRIMARY ACCESS
YEAR-END 2007**

77,011,618 Subscribers



Source: Morgan Stanley, "What does the Market Expect?" April 8, 2004.

The increase in broadband customers is even more striking when viewed as a percentage of households with personal computers. As illustrated by Table 1, the percentage of households with Internet that elect to purchase cable modem service grew from 12.49% as of June 30, 2001, to 25.2% by year-end 2003. DSL penetration of Internet households increased from 6.58% as of June 2001 to 10.6 % by year end 2003. The combined penetration of cable modem service and residential DSL rose from 19.07% in mid-2001 to 35.8 % by year-end 2003.

**TABLE 1
CABLE MODEM AND DSL PENETRATION**

	June 2001		December 2003	
	Customers	Penetration as Percent of Internet Homes	Customers	Penetration as Percent of Internet Homes
Cable	5.5 Million	12.49%	15.69 Million	25.2%
DSL	2.84 Million	6.58%	6.56 Million	10.6%
Total	8.34 Million	19.07%	22.25 Million	35.8%

Source: Morgan Stanley, "What does the Market Expect?" April 8, 2004.

D. Deployment of Broadband Services Has Kept Ahead of – and Stimulated – Consumer Demand for Such Services.

In assessing the timeliness of the deployment of advanced services, and in defining such advanced services for purposes of Section 706, the distinction between narrowband and broadband service is still the relevant distinction. It is still the case that only a third of all residential Internet customers purchase broadband service, and the relevant policy question remains whether deployment of broadband service is keeping pace with demand for such service.

The Commission has previously defined “advanced telecommunications capability” for purposes of Section 706 as “services and facilities with an upstream (customer-to provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second (kbps).”²³ In its Third Report, the Commission emphasized that its definitional standards are

not intended to be viewed as an ultimate goal. Instead they are intended to measure what is happening in the current market, not to drive the market. Nor do these definitions drive any regulatory result outside of this Report, beyond giving us a relatively static point at which to gauge the progress and growth in the advanced services market from one Report to the next.²⁴

The Commission has consistently adhered to the 200 kbps standard in its first three reports because “200 kbps is enough to provide the most popular applications, including web-browsing at the same speed as one can flip the pages of a book.”²⁵ There may come a time, as the Commission has recognized, when the most popular applications for Internet users require considerably greater speed, so that gauging progress towards a new benchmark becomes appropriate. But today, while the majority of Internet customers are still using narrowband dial-up service to send and read e-mail and to browse the Web, the 200 kbps standard – which

²³ Notice at 11.

²⁴ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Third Report*, 17 FCC Rcd 2844, 2851 (2002).

generally marks the barrier between narrowband and broadband service – remains a useful and appropriate yardstick for measuring whether deployment is reasonable and timely.

What all the facts and figures described above show is that broadband deployment has proceeded at a more than reasonable and timely pace. It has kept ahead of – and, indeed, stimulated – consumer demand for broadband Internet service. Cable modem service has been deployed throughout the country in a remarkably short period of time. More and more consumers are being lured away from narrowband to broadband. And, spurred by technology and competition, cable operators are continually upgrading the quality and speed of service available to consumers.

There will come a time, no doubt, when the services that most Internet customers use and expect will go far beyond what is available today, and when the benchmark for advanced telecommunications services far exceeds today’s demarcation point between narrowband and broadband services. And it will be cable operators, driven by marketplace forces, who develop and deploy the technology that makes such services possible.

II. THE COMMISSION SHOULD PERMIT ADVANCES SERVICES TO DEVELOP IN A STABLE, UNREGULATED POLICY ENVIRONMENT.

Section 706 of the Telecommunications Act of 1996 directs that “the Commission and each State Commission ... shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... by utilizing ... price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”²⁶ As in

²⁵ *Id.* at 2852.

²⁶ Section 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

past proceedings, the Commission seeks information on specific initiatives that it might undertake to encourage broadband deployment.

It is easy to discern, from the record of broadband deployment described above and documented in the three previous Section 706 Reports, the best way to encourage more of the same rapid growth and development of broadband technology, facilities and services. That growth and development have been nurtured and fostered by the Commission's consistently watchful but deregulatory approach. In a marketplace characterized by constant technological change and by increasingly vibrant competition, no other approach could be so effective.

From the outset, the Commission has resisted the urgings of parties seeking regulatory advantages, as well as state and local regulatory authorities, to impose a cumbersome regulatory framework on cable modem service offerings. Initially, the Commission pursued a policy of "vigilant restraint" – closely monitoring but not regulating the deployment of cable modem service.²⁷

After the United States Court of Appeals for the Ninth Circuit ruled, in *AT&T v. City of Portland*, 216 F.3d 871 (9th Cir. 2000), that cable modem service included the provision of a "telecommunications service," as that term is defined by the Communications Act of 1934, as amended, 47 U.S.C. § 3(46), the Commission initiated a proceeding to determine how the service should be classified under the statute. The Commission carefully determined that cable modem service was neither a "cable service" subject to the regulatory framework of Title VI, nor a

²⁷ See e.g., "FCC Cable Chief Lathen Calls for Marketplace Solutions in Era of Convergence; Echoes Chairman Kennard's Policy of Vigilant Restraint in Open Access Issue," FCC Press Release, July 22, 1999.

“telecommunications service” subject to Title II. It concluded that cable modem service was, instead, an “interstate information service.”²⁸

This interpretation of the statute afforded the Commission flexibility to determine whether and to what extent regulation might be necessary or appropriate to implement any of its statutory responsibilities. And, by making clear that the service was interstate, it ensured that any regulatory – or deregulatory – approach that it determined to be appropriate would not be frustrated by state and local regulation. The flexibility and the objective of nationwide deregulatory uniformity embodied by this approach represent the right way to promote the objectives of Section 706.

The brief history of cable modem service amply demonstrates how technological change and innovation are incompatible with traditional forms of regulation. At a time when cable operators were just beginning to try to figure out how to make cable modem service an efficient, attractive and viable service for consumers, advocates of regulation claimed that the reliance of several cable operators on @Home as the provider of Internet service would allow @Home unfairly to dominate the marketplace, to create so-called “walled gardens” and harm competing Internet service providers and web content providers. Shortly thereafter, it became clear that none of these things would occur. Consumers demanded access to all Internet content, “walled gardens” never blossomed, and @Home not only never dominated the marketplace but dissolved.

More recently, advocates of so-called “net neutrality” have argued that, absent regulation, cable operators will discriminate against unaffiliated providers of Internet content, applications and hardware – even though there have been no instances of such activity to date.

²⁸ *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17

Ironically, the one example they have consistently harped upon – cable operators’ alleged discrimination against providers of Virtual Private Networks (VPNs) – turns out to be an example of how *inappropriate* it would be to regulate in this technologically evolving area.

As NCTA has elsewhere demonstrated to the Commission, cable operators had sound and legitimate reasons for believing that running VPNs (which generally required static IP addresses) over cable modem service (which generally used dynamic IP addresses) would be problematic.²⁹ But VPN providers developed techniques to overcome the problems associated with dynamic IP addresses. Today VPNs no longer requires static IP addresses – and cable operators no longer restrict the use of VPNs with cable modem service.

Regulation, in this case, would have been precisely the wrong approach. Cable operators need to experiment and proceed with caution in determining how best to develop and deploy the new technologies that will enable broadband service to evolve and grow. It would have been a mistake to conclude that the restrictions on VPNs had an anticompetitive purpose when they were, in fact, based on sound technological concerns. And it would have been a mistake to impose a regulatory prohibition on such restrictions when the marketplace was fully capable of finding the optimal technological solution.

The Commission has consistently recognized the need to avoid intrusive regulation of still-evolving broadband technologies and services. And, eight years after enactment of the Telecommunications Act of 1996, that statute’s greatest success story is the flourishing of cable broadband services. As the Commission (and the courts) are continuing to establish and flesh out the statutory and regulatory classifications and ground rules under which broadband services

FCC Rcd 4798, 4802 (2002).

²⁹ See NCTA Ex Parte Letter, CS Docket No. 02-52, Sept. 8, 2003.

will operate, the best way to ensure that broadband services continue to grow and meet consumer demand – the aim of Section 706 – is to continue to allow marketplace forces to govern.

This is true not only for the regulation of cable modem service but also for the regulation of other broadband services, such as VoIP service. Just as consumers acquire television sets to view television programming, they will transition increasingly to advanced telecommunications to benefit from broadband services. VoIP is expected to provide a critical spur to broadband deployment and usage while offering the hope for substantial facilities-based residential phone competition, one of the main goals of the 1996 Act. If VoIP facilities and services are burdened with unnecessary regulation, the pace at which that service is introduced by providers and purchased by subscribers is likely to be impeded. The result will redound negatively not only to the deployment and usage of VoIP, but also to the deployment and usage of advanced telecommunications capability generally, and to the introduction and market acceptance of other services that utilize broadband.

III. THE COMMISSION SHOULD AFFIRMATIVELY PREVENT UTILITIES FROM USING THEIR CONTROL OF POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY TO DISADVANTAGE ADVANCED SERVICES COMPETITORS.

While maintaining a deregulatory environment for providers of broadband services is the most important thing that the Commission can do to promote the objectives of Section 706, there is one area in which more aggressive monitoring may be warranted. Specifically, the Commission should vigilantly monitor the advanced telecommunications marketplace to deter anticompetitive practices by telephone companies and electric utilities.

Telephone companies and electric utilities retain control over poles, ducts, conduits and rights of way necessary to the operation of advanced telecommunications by cable companies. As cable companies increasingly enter into areas outside of video programming, the competitive

stakes between cable companies, and telcos and electricians, increase. As the competitive stakes rise, the incentives of cable's facilities-based competitors to employ their facilities to disadvantage competitors also increase.

Congress has previously delegated to the FCC, where states do not oversee such practices, the responsibility to adjudicate complaints by cable companies that telephone and electric utilities are engaging in unreasonable practices with respect to the provision to cable companies of poles, ducts, conduits and rights-of-way under their control. The Commission should make clear that it intends to enforce its rules, and that it will devote all necessary resources to minimize, if not completely eliminate, unreasonable utility practices of this sort.

CONCLUSION

The evidence is compelling that advanced services are being deployed on a "reasonable and timely" – and competitive – basis throughout the United States, and consumers are purchasing these services at a rapid rate. The Commission's decision to let the marketplace work has resulted in tremendous consumer benefits. It should stay the course.

Respectfully submitted,

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